

This explanatory note relates to this Bill as introduced into Parliament.
The Central Coast Water Corporation Bill 2006 is cognate with this Bill.

Overview of Bill

The objects of this Bill are:

- (a) to establish a licensing scheme to provide for private sector involvement in the supply of water and the provision of sewerage services, and
- (b) to establish an access regime to ensure that certain monopoly infrastructure services involved in the supply of water and the provision of sewerage services are available to persons seeking access to them, and
- (c) to facilitate the resolution of disputes between persons operating certain sewerage infrastructure and persons seeking access to the contents of that infrastructure, and
- (d) to facilitate the resolution of disputes between private sector bodies and their customers in relation to the supply of water and the provision of sewerage services, and
- (e) to enact provisions to facilitate the construction, maintenance and operation of infrastructure for the supply of water and the provision of sewerage services, and
- (f) to protect private sector involvement in the supply of water and the provision of sewerage services by means of the creation of offences for that purpose, and
- (g) to make other provision of a minor, consequential or ancillary nature.

The Bill also makes consequential amendments to a number of Acts and enacts certain savings and transitional provisions.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Dictionary of words and expressions at the end of the proposed Act.

Clause 4 provides that the proposed Act binds the Crown.

Part 2 Licensing of network operators and retail suppliers

Division 1 Preliminary

Clause 5 prohibits the operation of water industry infrastructure, and the supply of water or the provision of sewerage services by means of such infrastructure, except as authorised by a licence. Public water utilities and certain infrastructure are excluded from the operation of the proposed section.

Clause 6 provides for 2 kinds of licence, a network operator's licence and a retail supplier's licence, and describes the activities that each kind of licence authorises.

Clause 7 sets out certain licensing principles to be taken into consideration in relation to decisions concerning the granting of licences and the imposition of conditions on licences.

Division 2 Procedure for obtaining licences

Clause 8 describes how an application for a licence is to be made, and limits to corporations the power to apply for a licence.

Clause 9 requires an application for a licence to be considered by IPART, which must publicise the application, consider any submissions made in relation to the application and furnish a report on the application to the Minister.

Clause 10 provides for the determination of an application by the Minister, who must consider IPART's advice and recommendations. The Minister's decision on an application is to be given to IPART which must post the relevant information on its internet website.

Clause 11 requires a licence to specify the activities that it authorises and the area of

operations within which those activities may be carried out.

Clause 12 provides that a licence remains in force until it is cancelled, but does not have effect for the purposes of proposed section 5 while it is suspended.

Clause 13 enables conditions to be imposed on a licence including, in particular, conditions with respect to social programs for the supply of water and the provision of sewerage services.

Division 3 Administration of licences

Clause 14 enables the Minister to charge annual licence fees.

Clause 15 enables the conditions of a licence to be varied or added to.

Clause 16 sets out the enforcement action that may be taken, either by the Minister or by IPART, in relation to a licensee that contravenes the proposed Act, the regulations under the proposed Act or the conditions of a licence.

Clause 17 requires a licensee to be notified of any proposed enforcement action and to be given an opportunity to make submissions with respect to the proposed action.

Clause 18 enables the Minister to give emergency directions to a licensee in relation to the operation of water industry infrastructure and in relation to the supply of water and the provision of sewerage services.

Clause 19 enables the Minister to cancel a licence if cancellation is in the public interest. The former licence holder will be entitled to seek compensation for the cancellation.

Clause 20 requires IPART to maintain a register of licences.

Part 3 Access to infrastructure services

Division 1 Preliminary

Clause 21 states that the object of the proposed Part is to establish a scheme to promote the economically efficient use and operation of, and investment in, significant water industry infrastructure, thereby promoting effective competition in upstream or downstream markets.

Clause 22 restricts the operation of the proposed Part to scheduled areas, being areas described in Schedule 1 to the proposed Act. The Schedule is to be capable of being added to by means of a Ministerial order.

Clause 23 sets out the declaration criteria to be used for the purposes of the proposed Part. Essentially, infrastructure services will be made the subject of coverage declarations if they meet the criteria. If they do not meet the criteria, they may be made the subject of a binding non-coverage declaration. If they are the subject of a coverage declaration, but cease to meet the criteria, the coverage declaration is subject to revocation.

Division 2 Coverage declarations

Clause 24 describes how an application for a coverage declaration is to be made.

Clause 25 describes the functions of IPART in assessing such an application.

Clause 26 provides for the determination by the Minister of such an application.

Clause 27 requires a coverage declaration to specify the period for which it is to have effect.

Division 3 Revocation of coverage declarations

Clause 28 describes how an application for revocation of a coverage declaration is to be made.

Clause 29 describes the functions of IPART in assessing such an application.

Clause 30 provides for the determination by the Minister of such an application.

Division 4 Binding non-coverage declarations

Clause 31 describes the infrastructure services to which the proposed Division applies (being proposed infrastructure and infrastructure that is currently unused or used otherwise than for the production, treatment, filtration, storage, conveyance or reticulation of water or sewage).

Clause 32 describes how an application for a binding non-coverage declaration is to be made.

Clause 33 describes the functions of IPART in assessing such an application.
Clause 34 provides for the determination by the Minister of such an application.
Clause 35 requires a binding non-coverage declaration to specify the period for which it is to have effect.

Clause 36 provides that a binding non-coverage declaration has effect only to infrastructure that has substantially the same capacity, and serves substantially the same geographical locations, as those specified in the application for the declaration.
Clause 37 provides for the revocation of binding non-coverage declarations.

Division 5 Access undertakings

Clause 38 enables a service provider to give IPART an access undertaking that sets out its arrangements for the provision of access to its infrastructure services. Such an undertaking will provide for disputes as to access to be referred to IPART for determination.

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Division 6 Access agreements and access determinations

Clause 39 provides for the terms of access to an infrastructure service the subject of a coverage declaration or access undertaking to be set out in an access agreement or in an access determination.

Clause 40 provides for the making of access determinations in relation to matters in dispute that are referred to IPART. Disputes are to be dealt with generally in accordance with the Commercial Arbitration Act 1984, but subject to certain provisions of the Independent Pricing and Regulatory Tribunal Act 1992.

Summaries of determinations are to be posted on IPART's internet website.

Division 7 Administration of access regime

Clause 41 sets out pricing principles to be used for the purposes of the proposed Part.
Clause 42 requires service providers whose infrastructure services become the subject of a coverage declaration to keep separate accounts for those services and to prepare a cost allocation manual for approval by IPART. Once a manual has been approved, costs will have to be allocated in accordance with the provisions of the manual.

Clause 43 makes it an offence for a person to hinder another person's access to infrastructure the subject of a coverage declaration or access undertaking.

Clause 44 requires IPART to maintain a register of infrastructure services that are the subject of coverage declarations, binding non-coverage declarations or access undertakings.

Part 4 Sewer mining

Clause 45 provides that the proposed Part is to apply to sewerage infrastructure for which a service provider has notified IPART of its willingness to permit sewer mining and of its policy regarding the granting of permission to carry out sewer mining.

Clause 46 provides for the making of sewer mining determinations in relation to matters in dispute that are referred to IPART. Disputes are to be dealt with generally in accordance with the Commercial Arbitration Act 1984. Summaries of determinations are to be posted on IPART's internet website.

Part 5 Operation of water retail market

Division 1 Resolution of disputes between small retail customers and licensed retail suppliers

Clause 47 provides for internal review by a licensed retail supplier of its decisions affecting small retail customers.

Clause 48 provides for the review by the ombudsman under an approved ombudsman scheme of decisions that internal review has failed to resolve.

Clause 49 enables the Minister to approve an ombudsman scheme for the purposes

of the proposed Act.

Clause 50 states that participation in an approved ombudsman scheme is a condition of a retail supplier's licence.

Division 2 Monopoly suppliers and retailers of last resort

Clause 51 enables the Minister to declare that a specified licensed retail supplier is a monopoly supplier in relation to certain matters.

Clause 52 enables the Minister to refer to IPART certain matters in relation to pricing, enables IPART to make pricing determinations in relation to those matters and requires monopoly suppliers to comply with those determinations.

Clause 53 requires a monopoly supplier to supply water or provide sewerage services, as the case may require, to any premises to which its water industry infrastructure is connected.

Division 3 Retailers of last resort

Clause 54 enables the Minister to declare that a specified person (whether a licensed retail supplier or a public water utility) is a retailer of last resort.

Clause 55 requires a retailer of last resort to prepare a contingency plan for circumstances in order to ensure that it can meet its obligations as a retailer of last resort.

Clause 56 empowers the Minister, in circumstances to be prescribed by the regulations, to make an order declaring a supply failure in relation to a licensed retail supplier.

Clause 57 sets out the consequences of the Minister declaring a supply failure: these are that the licensed retail supplier must cease supplying water or providing sewerage services (as specified by the declaration), that the retailer of last resort must take over those functions, and that the licensed retail supplier's customers are to become the customers of the retailer of last resort (and, for that purpose, are taken to have entered into a special circumstances contract with the retailer of last resort).

Part 6 Work relating to water industry infrastructure

Clause 58 enables licensed network operators to carry out work (in particular, on public roads and public reserves) for the purpose of constructing water industry infrastructure.

Clause 59 requires a licensed network operator to make good any damage that it causes to the surface of a public road or public reserve while carrying out work.

Clause 60 enables a licensed network operator to require landowners to stop trees on their land from damaging the network operator's water industry infrastructure.

Clause 61 enables a licensed network operator to require landowners to stop other structures and things on their land from damaging the network operator's water industry infrastructure.

Clause 62 enables a licensed network operator to require other persons to alter conduits that are in a public road.

Clause 63 prevents local councils and roads authorities from imposing charges on a licensed network operator in relation to water industry infrastructure that is located in a public road or public reserve.

Clause 64 provides that a licensed network operator retains ownership of its water industry infrastructure that is located in or under land that it does not own.

Clause 65 enables a licensed network operator to appoint meter readers, and confers on meter readers a power to enter premises (other than residential buildings) for the purpose of reading water meters.

Part 7 Offences

Division 1 Offences

Clause 66 creates an offence of unlawfully digging down to a licensed network operator's underground water industry infrastructure.

Clause 67 creates an offence of unlawfully interfering with a licensed network operator's water industry infrastructure.

Clause 68 creates an offence of unlawfully interfering with a meter attached to a licensed network operator's water main.

Clause 69 creates an offence of making unlawful connections to a licensed network operator's water main or sewer main.

Clause 70 creates an offence of unlawfully increasing the capacity of existing connections to a licensed network operator's water main or sewer main.

Clause 71 creates an offence of making unlawful discharges into a licensed network operator's stormwater drain or sewer main.

Clause 72 creates an offence of misappropriating water conveyed by a licensed network operator's water infrastructure.

Clause 73 creates an offence of doing plumbing or drainage work in relation to a licensed network operator's water industry infrastructure otherwise than under an appropriate licence or certificate under the Home Building Act 1989.

Division 2 Powers of inspectors

Clause 74 provides for the appointment of inspectors for the purposes of the proposed Act, and confers on them a power to enter non-residential premises.

Clause 75 requires an inspector to give notice before entering premises pursuant to a power of entry.

Clause 76 enables an inspector to use reasonable force in order to gain entry to premises.

Clause 77 requires an inspector who uses force to gain entry to premises to notify the Minister of that fact.

Clause 78 requires an inspector to exercise due care when exercising a power of entry.

Clause 79 provides for the payment of compensation for damage arising from an inspector's exercise of a power of entry.

Clause 80 provides for the issue of a warrant of entry to enable an inspector to enter premises (including residential premises). Warrants of entry will be subject to the provisions of Division 4 of Part 5 of the Law Enforcement (Powers and Responsibilities) Act 2002.

Clause 81 makes it an offence for a person to prevent an inspector from exercising the inspector's functions, to hinder or obstruct an inspector in the exercise of any such function or to impersonate an inspector.

Division 3 General

Clause 82 provides for the service of penalty notices for the purposes of the proposed Act.

Clause 83 enables a court that finds a person guilty of an offence against proposed section 66–72 to order that the person's premises be disconnected from a water main or that the supply of water to those premises be restricted or discontinued.

Clause 84 enables a court to make orders for the payment of money for water that has been misappropriated in contravention of proposed section 72.

Part 8 Functions of IPART

Division 1 Licence auditing functions

Clause 85 provides that IPART has the function of monitoring, and reporting to the Minister on, the level of compliance by licensees in relation to the conditions of their licences.

Clause 86 requires licensees to pay for the cost of IPART's licence auditing functions.

Clause 87 enables IPART to direct licensees to keep specified records and provide specified information.

Clause 88 makes it an offence for a licensee to refuse or fail to comply with a direction by IPART as to the keeping of records or the provision of information.

Clause 89 requires IPART to prepare annual reports as to the results of its licence auditing activities.

Division 2 Regulatory functions

Clause 90 provides that IPART has certain regulatory functions in connection with the licensing provisions of the proposed Act.

Division 3 Miscellaneous

Clause 91 enables IPART to carry out investigations in connection with the exercise of its functions under the proposed Act.

Clause 92 enables IPART to issue guidelines as to how it exercises its functions under the proposed Act.

Clause 93 excludes the access regime under Part 3 of the proposed Act from the application of Division 3 of Part 3 of the Independent Pricing and Regulatory Tribunal Act 1992.

Part 9 Miscellaneous

Clause 94 enables the Minister and the Director-General to delegate their functions under the proposed Act.

Clause 95 provides for the service of documents for the purposes of the proposed Act.

Clause 96 excludes certain persons from personal liability for acts and omissions in their execution of the proposed Act.

Clause 97 provides that directors and other persons concerned in the management of a corporation are vicariously liable for the corporation's contraventions of the proposed Act or the regulations under the proposed Act.

Clause 98 enables proceedings for offences under the proposed Act to be taken before a Local Court or before the Supreme Court in its summary jurisdiction, and provides that the penalties imposed by a Local Court in any such proceedings cannot exceed 100 penalty units (in the case of a corporation) or 50 penalty units (in any other case).

Clause 99 enables money due to the Minister or IPART to be recovered as a debt due to the Crown.

Clause 100 enables the Director-General to issue evidentiary certificates in relation to licences under the proposed Act.

Clause 101 enables regulations to be made for the purposes of the proposed Act, including regulations with respect to matters set out in Schedule 2. A regulation will be able to create offences carrying penalties of 250 penalty units (in the case of a corporation) and 100 penalty units (in any other case).

Clause 102 is a formal provision that gives effect to Schedule 3 (Amendment of other Acts).

Clause 103 is a formal provision that gives effect to Schedule 4 (Savings, transitional and other provisions).

Clause 104 is a standard review clause, requiring a review of the proposed Act to be undertaken 5 years after the date of assent to the proposed Act.

Schedule 1 Scheduled areas

Schedule 1 lists the areas that are to be scheduled areas for the purposes of the proposed Act. Initially, they will comprise the areas of operations of the Sydney Water Corporation and the Hunter Water Corporation. Under proposed section 22 (2), further areas can be added to the Schedule.

Schedule 2 Regulation-making powers

Schedule 2 lists specific matters with respect to which regulations may be made under the proposed Act.

Schedule 3 Amendment of other Acts

Schedule 3 amends the Acts specified in the Schedule.

Schedule 4 Savings, transitional and other provisions

Schedule 4 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Dictionary

The Dictionary defines various words and expressions for the purposes of the proposed Act.